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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

CITY AND COUNTY OF SAN FRANCISCO et al., Plaintiffs and Respondents, v. ANNE KIHAGI et al., Defendants and Appellants.	A152933 (San Francisco City and County Super. Ct. No. CGC-15-546152)

After respondent City and County of San Francisco (City) successfully sued appellant landlords for illegally harassing their tenants and violating state and local building and housing laws, the City sought its attorney fees. The trial court awarded the City most, but not all, of the requested fees, and the landlords appealed. They argue that the City was not legally entitled to fees and that the fees awarded were unreasonable in any event, but we disagree. We therefore affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

We summarized the underlying factual and procedural background of these proceedings in our previous opinion in which we affirmed the judgment entered against appellants Anne Kihagi, Julia Mwangi, Christine Mwangi, and their limited liability companies that own, manage, operate, and maintain their San Francisco properties: Xelan Prop 1, LLC; Renka Prop, LLC; Nozari 2, LLC; and Zoriall, LLC (collectively, the landlords). (*City and County of San Francisco v. Kihagi* (Dec. 3, 2018, A151719)

[nonpub. opn.] (*Kihagi I*).) After a nearly month-long bench trial, the trial court made detailed findings that the landlords illegally harassed their tenants and violated state and local building and housing laws.

The trial court's statement of decision was roughly divided into two sections. One section made findings of fact about municipal code violations that amounted to nuisances under City codes at each of the landlords' properties.[1] The trial court awarded a total of $1,117,500 in penalties for violations of the City's Building, Plumbing, Mechanical, and Electrical Codes.

Another section of the statement of decision made findings of fact about tenant harassment. The trial court concluded that the landlords had violated the City's Residential Rent Stabilization and Arbitration Ordinance (hereafter Rent Ordinance) governing tenant harassment (S.F. Admin. Code § 37.10B, hereafter Admin. Code), and it concluded that those acts of harassment amounted to violations of the Unfair Competition Law (UCL). The court awarded a total of $1,612,000 under the UCL for the violations. Although the City originally had sought punitive damages under the Rent Ordinance, it elected after trial to seek civil penalties under City codes instead (*ante*, fn. 1).

Finally, the trial court also issued an injunction ordering the landlords to hire an independent management company to be responsible for the day-to-day management of the landlords' properties for 60 months. The injunction was issued under the authority of various state laws as well as under the Rent Ordinance (Admin. Code § 37.10B(c)(4)).

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[1] As set forth in *Kihagi I*, the San Francisco Building Code (Building Code) defines what constitutes an "unsafe" building and provides that owners who violate the code are subject to civil penalties; and the San Francisco Housing Code (Housing Code) defines substandard buildings that amount to nuisances and also provides for civil penalties. (Build. Code, §§ 102A, 103A; Hous. Code, §§ 204(c)(2), 400.) Although the City's complaint did not allege causes of action under the Building Code or the Housing Code, the trial court permitted the City to amend its complaint at the end of trial to seek penalties under those codes, and this court affirmed.

Judgment was entered in June 2017, the landlords appealed, and this court affirmed.

Meanwhile in the trial court, the City sought its attorney fees by motion filed in August 2017. The City argued it was entitled to fees under the provision of the State Housing Law that authorizes attorney fees where the court finds a building substantially endangered residents' health and safety (Health & Saf. Code, § 17980.7, subd. (d)(1)) and the provision of the Rent Ordinance that authorizes attorney fees upon a finding of tenant harassment (Admin. Code, § 37.10B(c)(5)). The City sought a total of $2,606,741 in attorney fees and $234,135.54 in costs.

To support the amount of fees and costs sought, the City submitted ten declarations. Four deputy city attorneys, the lead paralegal, and a legal assistant described the work they performed on the litigation and detailed the thousands of hours devoted to the case using the City Attorney Office's system for time entry and billing. They also explained how the City Attorney Office's internal "overhead" rates for their services in some instances differed from the market rates for the services, and requested reimbursement based on the market rates. For example, a deputy city attorney explained that although the City Attorney's Office bills an internal "overhead" hourly rate of $217 for her services, she requested a reasonable hourly rate of $395 based on her level of expertise, experience, and qualifications. The former head of the code enforcement team at the City Attorney's Office who now works in private practice for government clients attested that the case was "complex and large," and explained what reasonable rates for the work performed would be. Three other attorneys who specialized in similar litigation likewise attested to the reasonableness of the requested hourly rates.

The landlords opposed the request for attorney fees. They argued that the City was not legally entitled to the fees under either the State Housing Law or the Rent Ordinance, and that the fees sought by the City were "patently unreasonable" in any event. (Unnecessary formatting omitted.) The landlords did not, however, present any evidence refuting the reasonableness of the requested hourly rates.

The trial court granted the City's motion. As discussed in more detail below, the court first ruled that the City was statutorily entitled to its reasonable attorney fees. As for the amount of fees, the court concluded that the requested rates were for the most part reasonable and that the amount of time spent on the complex case was generally reasonable. The court did reduce the hourly rate of one of the deputy attorneys by $25 per hour and reduced the number of hours that one of the attorneys spent on the case, resulting in a reduction of the total amount sought by more than $100,000. The final award was for $2,503,141, compared to the City's request of $2,606,741.[2] This appeal followed.

The City filed a motion to dismiss *Kihagi I* and this appeal under the disentitlement doctrine, but this court denied the motion by order filed on June 19, 2018. The court later dismissed this appeal because the landlords failed to timely file their opening brief after having received extensions of time totaling more than 90 days. The court denied the landlords' first motion to reinstate the appeal because they offered no assurances that they would soon file their brief. The appeal was reinstated after the landlords filed a second motion to reinstate the appeal accompanied by an opening brief that appears to be mostly duplicative of the landlords' opposition in the trial court to the City's request for fees. The court later granted landlords' attorneys' motion to withdraw, and Kihagi appeared pro per at oral argument.

II.
DISCUSSION

The landlords argue that the trial court erred both as a legal and factual matter in awarding the City its attorney fees, but they are mistaken.

A. The Trial Court Was Legally Authorized to Award Attorney Fees.

"It is elementary that each party bears his or her own attorney fees in litigation, unless otherwise provided by contract or statute." (*City and County of San Francisco v.*

[2] The court also awarded $234,135.54 in costs, later reduced to $201,279.75 after the landlords filed an untimely motion to strike and tax costs. The landlords do not challenge in this appeal the trial court's award of costs.

Ballard (2006) 136 Cal.App.4th 381, 399 (*Ballard*).) No contract authorizes fees in this case, but the trial court relied on two legislative provisions to award fees, both of which the landlords challenge. "The determination of the legal basis for an award of attorney fees is a question of law that we review de novo." (*Ibid.*)

1. The Landlords Owed Attorney Fees Under the Rent Ordinance.

The trial court based the award of attorney fees in part on the Rent Ordinance because it had granted injunctive relief under the ordinance. The landlords' argument that the City was not entitled to its fees is based on a reading of the ordinance that we reject.

The Rent Ordinance defines tenant harassment in subdivision (a) (Admin. Code, § 37.10B(a)) and provides several possible methods of enforcement and penalties in subdivision (c) (§ 37.10B(c)). Subdivision (c)(4) is titled "Injunction" and provides that a court may enjoin any person who commits a violation of the code from further harassment, which the trial court did here. Subdivision (c)(5) is titled "Penalties and Other Monetary Awards" and lists all the monetary relief available to a prevailing plaintiff: "Any person who violates . . . the provisions of this Section is liable for each and every such offense for money damages of not less than three times actual damages suffered by an aggrieved party (including damages for mental or emotional distress), or for statutory damages in the sum of one thousand dollars, whichever is greater, and whatever other relief the court deems appropriate. . . . *In addition, a prevailing plaintiff shall be entitled to reasonable attorney's fees* and costs pursuant to order of the court. The trier of fact may also award punitive damages to any plaintiff . . . . The remedies available under this Section shall be in addition to any other existing remedies which may be available to the tenant or the City." (Italics added.)

The landlords argue that because the City elected not to pursue the punitive damages available under section 37.10B(c)(5), it is not entitled to attorney fees available under that section. They contend that the City "had foregone requisite damages under 37.10B, electing instead to pursue penalties under [the] California Unfair Competition Law" (Bus. & Prof. Code, § 17200), which does not provide for the recovery of attorney

fees. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1148 [attorney fees unavailable under UCL]; *People ex rel. City of Santa Monica v. Gabriel* (2010) 186 Cal.App.4th 882, 889 [in action against landlords, People could not recover attorney fees even though violations of UCL were based on city municipal code that authorized fees].)

The City responds by claiming that it was automatically entitled to its attorney fees under section 37.10B(c)(5) because it was a "prevailing plaintiff" as that term is used in that subdivision. It is beyond dispute that the City prevailed insofar as it established with "overwhelming evidence" that the landlords committed more than 1,600 acts of tenant harassment at their properties, and the trial court enjoined them under the Rent Ordinance from further harassment. The landlords do not dispute that fact. Instead, they argue that there was no authority to award fees under the Rent Ordinance section that authorizes attorney fees (§ 37.10B(c)(5)) because the trial court did not award penalties under that section, but instead awarded them under the UCL. The question for us is whether we may construe the term "prevailing plaintiff" under section 37.10B(c)(5) to include a plaintiff that secured injunctive relief under section 37.10B(c)(4). We answer in the affirmative. Although the Rent Ordinance divides injunctive relief and monetary relief into two separate subdivisions, there is no indication that an award of attorney fees was meant only for parties who secure monetary awards.

Our conclusion is bolstered by the common use of "section" when interpreting a statute. In general, "Section" means a section of a code and "Subdivision" means a subdivision of the section in which the term occurs. (E.g., Bus. & Prof. Code, § 15; Corp. Code, § 10; Evid. Code, § 7, subds. (d) & (e); Health & Saf. Code, § 10.) Again, section 37.10B(c)(5) ("Penalties *and Other Monetary Awards*") provides that any person who violates "this *Section*" is liable for money damages, and "[i]n addition, a prevailing plaintiff shall be entitled to reasonable attorney's fees." (Italics added.) Because there is no question that the landlords violated "this Section" (i.e., the Rent Ordinance), it follows that the trial court was authorized to award attorney fees. Furthermore, even if "this Section" applied only to subdivision (c) (e.g., *Ballard*, *supra*, 136 Cal.App.4th at p. 401),

it would still encompass the injunctive relief awarded in this case under section 37.10(c)(4).

Finally, we reject the landlords' apparent contention that the City was not entitled to attorney fees because it did not cite the Rent Ordinance in its complaint as a basis for securing an injunction. The City's complaint repeatedly cited the Rent Ordinance and sought an injunction ordering the landlords "to permanently cease the unlawful harassment of their tenants." Nothing more was needed under the circumstances.

2. The Landlords Owed Attorney Fees Under the State Housing Law.

The landlords next argue that the City was not entitled to an award of attorney fees under the State Housing Law, but they are again mistaken.

The State Housing Law provides that "[i]f any building is maintained in a manner that violates any provisions of this part, . . . or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part." (Health & Saf. Code, § 17980.6.) The statute provides that notice of the violation must be given to property residents. (*Ibid.*) Health and Safety Code section 17980.7, in turn, provides that "[i]f the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to Section 17980.6, upon the entry of any order or judgment, the court shall . . . . [o]rder the owner to pay all reasonable and actual costs of the enforcement agency including . . . attorney fees or costs." (Health & Saf. Code, § 17980.7, subd. (d)(1).) The trial court relied on this provision in awarding attorney fees to the City.

In determining that the landlords violated City municipal codes, the trial court found that the landlords maintained their buildings in a manner that violated a "provision in a local ordinance that is similar to" the State Housing Law. (Health & Saf. Code, § 17980.6.) In *Kihagi I*, we rejected the landlords' argument that the City was not entitled to penalties because it did not follow the administrative procedures set forth in the State Housing Law. Because there was nothing in the Building Code to suggest that

the administrative process was the exclusive means to seek penalties and because the landlords received all the due process protections they would have otherwise received in an administrative hearing, we reasoned, the trial court properly awarded penalties.

The landlords raise a similar argument in this appeal. They again argue that because no abatement orders were entered under the procedures set forth in the State Housing Law, the City was not entitled to its fees under its provisions. As in *Kihagi I*, the landlords make much of the fact that no abatement order was entered following an administrative hearing. But this argument sidesteps the fact that the trial court found that the landlords' properties were noncompliant with state and municipal law for 4,470 days, and the court specifically found that the landlords' properties were in a condition that substantially endangered residents' health and safety, a prerequisite for awarding attorney fees under Health and Safety Code section 17980.7, subdivision (d)(1). Just as the City's entitlement to civil penalties was not negated because the requisite findings were made following a court trial instead of an administrative hearing, the City's entitlement to an award of attorney fees is not negated because the findings necessary for such an award were made by the trial court instead of in an abatement order. (See also *City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 922 [phrase "order or notice to repair or abate" in § 17980.6 "appears to have no particular talismanic significance"].)

The two cases cited by the landlords do not help them. *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302 was an action against property owners "for nuisance abatement and other relief, including civil penalties for violations of the [Housing Code and Building Code]." (*Id.* at pp. 1305-1306.) The City's department of building inspection issued an order of abatement, and the City then filed a complaint for injunctive relief and penalties. (*Id.* at p. 1307.) The owners abated the violations, but a new notice of violation was issued after a subsequent inspection revealed new code violations. (*Ibid.*) Following trial, the trial court imposed penalties under the Housing Code, the Building Code, and the UCL, and it also awarded attorney fees. (*Id.* at p. 1308.) On appeal, the property owners argued that the trial court miscalculated the penalty award under the Housing Code and that the award violated their due process

rights. (*Id.* at pp. 1308-1309.) They did not, however, challenge the attorney fees awarded. (*Id.* at p. 1308.) Thus, we cannot rely on *Sainez* for the proposition that an abatement order was a prerequisite to an award of fees.[3] *Ballard*, *supra*, 136 Cal.App.4th 381, also cited by the landlords, held that a building owner was not entitled to his attorney fees under Health and Safety Code section 17980.7, subdivision (c)(11), which applies only to receiverships, because there were no receivership proceedings in that case. (*Ballard*, at p. 401.) The court did note that the City took the position that attorney fees under Health and Safety Code section 17980.7, subdivision (d), "may be awarded only to the enforcing agency in an abatement action." (*Ballard*, p. 400.) But the City did not, as the landlords suggest in this appeal, take the position that a specific procedure must be followed in such an action. We agree with the trial court that the City was legally entitled to its attorney fees.

B. The Trial Court Did Not Abuse Its Discretion When Calculating the Amount of Attorney Fees.

The landlords next contend that even if the City was legally entitled to its attorney fees, the amount awarded was unreasonable, but we disagree.

"[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The trial court may take several factors into account when determining an award of attorney fees, such as the novelty and difficulty of the questions involved and the skill displayed in presenting them. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) The purpose of adjusting an award based on these factors "is to fix a fee at the fair market value for the particular action." (*Ibid.*) The calculation of market rates is appropriate where government workers are the ones for whom fees are sought. (*City of Santa Rosa v. Patel* (2010)

[3] To the extent the landlords argue that an abatement order was a prerequisite for the underlying award of penalties, we already rejected this argument in *Kihagi I* and relied on *Sainez* for the proposition that no specific administrative procedure is necessary for the imposition of penalties under the Building Code and Housing Code. (*Sainez*, at pp. 1306-1308, 1314.)

191 Cal.App.4th 65, 70-71.) Because the trial court is the best judge of the value of professional services rendered, we review an award of attorney fees for an abuse of discretion and will disturb it only if it is " 'clearly wrong.' " (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49 (*Serrano III*).)

Both of the statutory bases for awarding fees provided that the City is entitled to "reasonable" attorney fees. (Admin. Code § 37.10B(c)(5); Health & Saf. Code, § 17980.7, subd. (d)(1).) Health and Safety Code section 17980.7 also specifies that the owner pay "all reasonable and *actual* costs." (Italics added.) The landlords contend that the fees awarded were neither reasonable nor the "actual" cost of attorney fees.

As for whether the attorney fees were unreasonably high, the landlords first focus on factors that were of little relevance in this case. True enough, in awarding attorney fees, the trial court may consider the factors listed above (novelty and difficulty of the questions involved and the skill displayed in presenting them) as well as "the extent to which the nature of the litigation precluded other employment by the attorneys" and "the contingent nature of the fee award." (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1132.) The landlords first argue that the latter two factors were not present here because "[a]s employees of the City on fixed salaries, Respondents' attorneys cannot be said to have foregone any other employment by pursuing this action, so-called opportunity costs notwithstanding, where engaging in public litigation on behalf of the City inheres and comprises their necessary employment function." That may be true, as far as it goes. But just because those two factors did not weigh in favor of the City, it does not follow that the trial court did not fairly set the fees at a fair market value. (*Ibid.*) The lodestar figure may be adjusted based on the consideration of factors *specific to each case*. (*Id.* at p. 1134.)

The landlords next fault the City for not producing "time sheets" or "billing records" to support its award. True, parties seeking fees must provide "a careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano III*, *supra*, 20 Cal.3d at p. 48.) But we reject the contention that the City did not meet this requirement. A deputy city attorney

described the time entry and billing system maintained by the City Attorney's Office "in which attorneys, paralegals, legal assistants, and investigators are required to enter all tasks performed by matter, including the amount of time spent, a description of the task, and the date the work was performed." Each person who worked on the litigation "thoroughly reviewed" their billing records in the matter and described the hours spent working on particular tasks during specific time periods (e.g., 54 hours between January 6, 2015, and March 5, 2015, working on various tasks, described in detail in a declaration). This was a sufficient evidentiary basis upon which to award fees.

This case is distinguishable from *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, cited by the landlords. There, in affirming the downward adjustment of a fee request, the court noted that "where vague, block-billed time entries inflated with noncompensable hours destroy an attorney's credibility with the trial court, we have no power on appeal to restore it." (*Id.* at pp. 1325-1326.) Here, there was no such loss of credibility. While it may be true that the City did not present original time records, they described their work in sufficient detail for the trial court to evaluate, and the landlords give us no reason to set aside the trial court's assessment. "We may not reweigh on appeal a trial court's assessment of an attorney's declaration." (*Id.* at p. 1323.)

The landlords also argue generally that the City sought attorney fees for work that was duplicative or unnecessary. But the trial court already eliminated some work it found to be duplicative, and on appeal the landlords offer only vague complaints about time spent working with witnesses. We also reject the landlords' brief contention that the fee award should be reduced because the attorneys for the City "are public employees whose market rates are generally lower than say counsel in the private sector required to be on the cutting-edge of technology issues," given the evidentiary support the City provided for the hourly rates it sought. In general, authorized attorney fees are calculated based on the reasonable market value of services, "without regard to the fact that counsel are employed by an organization funded by public . . . monies." (*Serrano v. Unruh*

(1982) 32 Cal.3d 621, 643 (*Serrano IV*).) The trial court did not abuse its discretion in determining that the attorney fees awarded were reasonable.

The landlords further contend that the award of attorney fees did not represent the "actual" amount incurred under Health and Safety Code section 17980.7, subdivision (d)(1). The statute provides that upon entry of judgment, the court shall order the owner "to pay all reasonable *and actual costs* of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, *attorney fees or costs*, and all costs of prosecution." (Italics added.) Although there apparently is no caselaw interpreting this aspect of the statute, the landlords reason that because market rates were not the "actual" cost of paying the legal team for their work, the statute does not support the award.

The trial court rejected the landlords' reasoning. It compared the relevant statute to former Corporations Code section 317, subdivision (e), which provided that a corporate agent shall only be indemnified for "expenses actually and reasonable incurred." (*Fed-Mart. Corp. v. Pell Enterprises, Inc.* (1980) 111 Cal.App.3d 215, 221.) In *Fed-Mart*, the trial court did not determine the number of hours that attorneys spent on indemnifiable matters, and appellant argued that the court thus did not properly calculate respondent's "actual attorney fees." (*Id.* at pp. 223-224.) *Fed-Mart* disagreed, concluded that there was no reason to depart from the customary method of awarding attorney fees, and noted that the "determination of what constitutes the actual and reasonable attorney fees is committed to the sound discretion of the trial court." (*Id.* at pp. 225-228.) The trial court in this case noted that given the similarity between the statute in *Fed-Mart* and the one at issue here, it was permissible "to allow the prevailing party to collect reasonable attorneys' fees at market rate." This approach also is consistent with the general rule, noted above, that attorneys are awarded their reasonable, market-rate attorney fees for time actually spent on litigation whether they are government employees, working pro bono or under a contingency-fee agreement, or being paid under some other arrangement. (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 370-371 [trial court may award attorney fees to Labor Commissioner who represented employee without

charge even though employee did not technically "incur" the fees, Lab. Code, § 98.2, subd. (c); *Serrano IV, supra*, 32 Cal.3d at pp. 642-643; *In re Tobacco Cases I* (2011) 193 Cal.App.4th 1591, 1604-1605 [the People entitled to fees set at prevailing market rates instead of "substantially lower salaried rates of in-house counsel"]; *City of Santa Rosa v. Patel*, *supra*, 191 Cal.App.4th at p. 71 [lodestar method does not require "protracted litigation concerning the question of salaries, costs, and the internal economics of a law office"]; but see *Avenida San Juan Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256, 1282 [where there was no evidence that attorney billed for services, no fees were "actually incurred" under Code Civ. Proc., § 1036].)

Even if this court were to conclude that the attorney fees awarded did not represent the "actual costs" under Health and Safety Code section 17980.7, that conclusion would not justify reversing the award of attorney fees. The trial court awarded attorney fees based on *both* Administrative Code section 37.10B(c)(5) *and* the Health and Safety Code. The court did not distinguish between the two grounds or apportion the fees awarded between the statutes. We may therefore infer that the trial court concluded that all the fees awarded were justified under both grounds. The landlords do not argue otherwise on appeal. They simply assert, in a single paragraph unsupported by legal authority or citations to the record, that the City was "awarded a fee total that vastly exceeds the sum of the annual salaries of all the billing attorneys and paralegals on the case." The landlords argue that unspecified fees "should be excluded" but do not specify what the true "actual" amount was. They also fail to address whether the award should be reduced if, as we have concluded, the City was entitled to attorney fees under the Administrative Code. Given all these circumstances, the landlords have failed to demonstrate that the order awarding attorney fees should be reversed.

III.
DISPOSITION

The trial court's order awarding attorney fees is affirmed. The City shall recover its costs on appeal.

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Humes, P.J.

WE CONCUR:

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Margulies, J.

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Banke, J.